

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

..... X
STEVEN SIMKIN,

Plaintiff,

No. _____

v.

SUMMONS

09101501

LAURA BLANK,

Defendant.

FILED
FEB 03 2009
NEW YORK
COUNTY CLERK'S OFFICE

.....
TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer upon plaintiffs within 20 days after service of this summons, exclusive of the date of service, or within 30 days after completion of service where service is made in any manner other than by personal delivery within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiffs designate the County of New York as the place for trial. Pursuant to New York Civil Practice Law and Rules Section 503(a), venue is based upon (a) the county in which the defendant resides at the time this action is commenced, and (b) the Court's retention of jurisdiction over the subject matter.

Dated: New York, New York
February 3, 2009

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

By: [Signature]
Daniel J. Beller

1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000
Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

STEVEN SIMKIN,

Plaintiff,

v.

LAURA BLANK,

Defendant.

No. _____

COMPLAINT

09101501

FILED

FEB 03 2006

NEW YORK
COUNTY CLERK'S OFFICE

Steven Simkin, by his attorneys Paul, Weiss, Rifkind, Wharton & Garrison

LLP, alleges as follows:

Nature of the Action

1. Plaintiff Steven Simkin ("Steven") and Defendant Laura Blank ("Laura") were formerly husband and wife. On June 27, 2006, Steven and Laura executed an agreement (the "Agreement") providing for the division of marital assets in connection with their divorce.
2. Central to the Agreement was the parties' intent that each would retain approximately equal shares of the parties' assets as-of the date on which they formally separated (the "Cut-Off Date"). Indeed, it was a principal purpose of the Agreement to give effect to Steven and Laura's decision regarding the division of the couple's assets.
3. The couple's largest asset, or so they mistakenly believed, was an "account" (the "Account") with Bernard L. Madoff Investment Securities ("Madoff Securities"). As of the Cut-Off Date, the written monthly statement of account for the "Account" reported \$5.4 million held in securities. Along with other decisions the couple

made with respect to their assets, Steven and Laura agreed that Steven would pay Laura half of the "Account" in cash.

4. Unknown to Steven and Laura, the "Account", whose valuation was critical to the parties' Agreement, was a sham and fiction, created by Bernard Madoff ("Madoff"), the principal of Madoff Securities. For decades, long before Steven and Laura had separated and long before they entered into the Agreement, Madoff had operated Madoff Securities as a giant "Ponzi scheme." According to press reports, in December, 2008, Madoff confessed to employees and to agents of the F.B.I. that he and Madoff Securities had perpetrated what appears to be the largest financial fraud in American, and perhaps world, history. In short, the "Account" is worthless, literally not worth the paper on which the parties' valuation rested.

5. As a result of the parties clear mistake of fact, Steven paid Laura millions of dollars believing, as did Laura, that it represented her share in the "Account" (as the parties then understood it to be) and retained the "Account" as a portion of his equitable share of the couple's assets. As a result, Laura obtained a windfall and Steven did not receive an equitable share of the couple's joint assets. Accordingly, by this action, Steven seeks to reform the Agreement, which is grounded upon a material and mutual mistake respecting the couple's assets at the time of the Cut-Off Date, and recover from Laura so as to accomplish the goal the parties intended by executing the Agreement.

Parties

6. Plaintiff Steven Simkin is a natural person who resides in Scarsdale, New York.

7. Defendant Laura Blank is a natural person who resides in New York, New York.

8. Steven and Laura married on March 10, 1973. A Judgment of Divorce with respect to their marriage was executed by Justice Rosalyn Richter of this Court on July 26, 2006, and entered on August 7, 2006 (the "Judgment").

Jurisdiction and Venue

9. This Court has jurisdiction over the parties because both parties reside in the State of New York.

10. This Court also has jurisdiction because, by the terms of the Judgment, this Court retained jurisdiction with respect to the Agreement, and to "mak[e] such further judgment as it finds appropriate under the circumstances existing at the time application for that purpose is made to it."

11. Venue is proper in this district because the Defendant resides in New York County, the Agreement was executed in New York County, and by the terms of the Judgment.

Allegations of Fact

12. After nearly 30 years of marriage, the parties separated in January, 2002.

13. On August 20, 2004, Steven and Laura entered into a Stipulation pursuant to which, among other things, September 1, 2004, was established as the Cut-Off Date for the cessation of the accumulation of marital property as defined in New York Domestic Relations Law § 236(B)(1)(c).

14. Steven, Laura, and their respective counsel thereafter negotiated a division of their marital assets and an uncontested divorce.

15. During those negotiations, Steven and Laura both recognized that in the circumstances of their marriage, the endpoint of divorce litigation would most likely be an equal division of their marital assets as of the Cut-Off Date.

16. Steven and Laura easily identified the marital assets to be divided between them, and their negotiations therefore focused on valuing the couple's assets and on methods of valuation.

17. For nearly two years, Steven and Laura discussed the value of, and method of valuing, various marital assets, including their home in Scarsdale, Steven's law partnership, Laura's apartment in Manhattan, and the couple's respective retirement benefits. One asset that the parties did not struggle to value, however, was the "Account." Steven and Laura each mistakenly believed that the "Account" was worth what Madoff, and the documents he presented to them, said it was worth — \$5.4 million as of the Cut-Off Date.

18. Steven and Laura's negotiations culminated in the execution of the Agreement on June 27, 2006.

19. By the Agreement, the parties sought to effect an equitable distribution of their marital assets, accomplishing without litigation what they expected a court to do if they litigated to final judgment. Among other terms governing the disposition of property, Steven paid millions of dollars to Laura — \$6,618,000 — "[a]s and for an equitable distribution of property . . . and in satisfaction of [Laura's] support

and marital property rights." A substantial portion of the cash payment Steven made to Laura was attributable to the parties' mistaken belief in the value of the "Account."

20. The parties believed that, in conjunction with the dispositions of their residential, personal, and intangible property, the payment to Laura would result in an equitable division of their total assets as of the Cut-Off Date.

21. As it turned out, however, the parties, through no fault of their own, were grossly mistaken as to the assets they held as of the Cut-Off Date.

22. On December 11, 2008, Bernard Madoff was arrested by the F.B.I. and charged with securities fraud. According to a press release issued by the F.B.I., on December 10 Madoff informed senior executives that Madoff Securities had operated as a Ponzi scheme on a gargantuan scale for many years. According to press reports, Madoff revealed to senior executives, and then to agents of the F.B.I., that tens of billions of dollars that clients believed were in their "accounts" had been stolen, misappropriated or never existed in the first place.

23. According to press reports, Madoff's victims include numerous banks, hedge funds, individuals, and charities. Some of the investors fooled by Madoff were among the world's most sophisticated and knowledgeable investors. Many of Madoff's victims were also individuals, like Steven and Laura, who entrusted him with the bulk of the savings they had accumulated over decades of hard work and accomplishment.

24. Today, Madoff remains under house arrest. A trustee has been appointed to oversee the liquidation of Madoff Securities. Steven, the bulk of whose liquid assets were invested with Madoff Securities, has been gravely damaged.

25. It is only fair and equitable for Laura to shoulder her share of that harm.

Count 1: Reformation

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-25 as though fully set forth herein.

27. As set forth above, the parties were mutually mistaken as to the value of the "Account" when they executed the Agreement. The "Account" did not document the value of the couple's cash and securities in an investment vehicle but, instead, reported fictional values evidencing, we now know, nothing more than a monumental Ponzi scheme. The parties intended that Laura should receive, and she did receive, an equal share of the "value" of the "Account" — or \$2.7 million — in cash and Steven would retain ownership of the "Account." The couple's understanding of the "Account" and its "value" was the product of a mistake for which neither is at fault. The Agreement, which was based on this mistaken understanding, therefore failed to accomplish the equitable division of the parties' marital assets as of the Cut-Off Date that each had intended. Because of the parties' plain mutual mistake the Agreement's financial terms were contrary to Steven and Laura's intent.

28. Further, the Agreement was unfair, unreasonable, and unconscionable, because it resulted in Laura receiving a far larger portion of the parties' marital assets as-of the Cut-Off Date than the parties intended at Steven's expense, causing him extreme hardship. Had Steven known the true value of the "Account," he would not have consented to the terms of the Agreement.

29. In the alternative, the Agreement's terms are the result of Madoff's extrinsic fraud. Both Steven and Laura relied on the account statements they periodically

received from Madoff Securities regarding the value of the "Account." Those statements were false, were known to be false by Madoff and Madoff Securities when they were sent, and were sent for the purpose of inducing Steven and Laura to maintain their investments.

30. For all of these reasons, jointly and alternatively, the Agreement is legally voidable and subsists in inequity. It is therefore within the Court's legal and equitable power, which is heightened as to the surveillance and enforcement of separation agreements, to reform the Agreement and require compensation to Steven that will accomplish the parties' mutual goal -- an equitable and equal division of their marital assets as-of the Cut-Off date.

Count 2: Unjust Enrichment/Restitution

31. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-30 as though fully set forth herein.

32. Laura has been unjustly enriched, having received millions of dollars based on an illusory and exaggerated value attributed to the "Account." Allowing Laura to retain her asymmetrically large portion of the parties' true assets would allow her to profit, at Steven's expense, from Madoff's fraud. This is an inequitable benefit conferred on Laura by virtue of the parties' joint mistake regarding the value of the Madoff Account, and an inequitable harm to Steven.

33. Laura should therefore pay such restitution to Steven, in an amount to be determined at trial, that would put the parties in the position they intended.

Prayer for Relief

WHEREFORE, Plaintiff requests judgment:

A. Reforming the Agreement and requiring payment to Steven in an amount to be determined to properly reflect the value of the "Account" as of the Cut-Off Date;

B. Ordering Laura to pay restitution to Steven in an amount to be determined at trial, plus pre-judgment interest; and

C. Any and all other and further relief that to the Court seems just and proper.

Dated: New York, NY
February 3, 2009

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

By: _____


Daniel J. Beller

1285 Avenue of the Americas
New York, New York 10019-6064
Phone: (212) 373-3000
Fax: (212) 757-3990
dbeller@paulweiss.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

STEVE SIMKIN,

Index No. _____

Plaintiffs,

-against-

LAURA BLANK,

Defendants.

SUMMONS AND COMPLAINT

Paul, Weiss, Rifkind, Wharton & Garrison LLP

Attorneys for Plaintiff Steve Simkin

ATTORNEYS AT LAW

1265 AVENUE OF THE AMERICAS 9 NEW YORK, NY 10019-9004
(212) 373-3000

All communications should be referred

to

Daniel J. Beller